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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA  
GONZÁLEZ, FREDDY JOSE ARAPE RIVAS,  
M.H., CECILIA DANIELA GONZÁLEZ  
HERRERA, ALBA CECILIA PURICA  
HERNÁNDEZ, E.R., HENDRINA VIVAS  
CASTILLO, A.C.A., SHERIKA BLANC, VILES  
DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as  
Secretary of Homeland Security, UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY, and UNITED STATES OF  
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

**PLAINTIFFS' NOTICE OF DEFENDANTS'  
NON-COMPLIANCE WITH COURT  
ORDER (DKT. 161)**

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1 Plaintiffs submit this Notice to inform the Court of Defendants' ongoing failure to comply  
2 with the Court's orders regarding discovery.

3 On May 29, 2025, this Court held a hearing on Plaintiffs' motion regarding what was an  
4 already-alarming pattern of Defendants' non-compliance with discovery orders. Dkt. 147. Part of the  
5 relief that Plaintiffs had sought included a request for a declaration confirming Defendants'  
6 collection efforts. The hearing thus included extensive discussion about Defendants' ongoing failure  
7 to even ask the relevant custodians whether they had responsive communications on mediums (*i.e.*,  
8 text messages, Signal, WhatsApp, etc.) beyond their government accounts, let alone to confirm the  
9 details of that inquiry in a sworn declaration.

10 On May 30, 2025, this Court issued an order directing Defendants to "*immediately* ask the 20  
11 custodians at issue whether they used communication means outside of government email and  
12 OneDrive with respect to the TPS decisions (*e.g.*, nongovernment email, text messaging, hard  
13 drive)," and directed that "[b]y 6/3/2025, the government shall file a declaration(s) from a person(s)  
14 with personal knowledge certifying that the inquiry was made and what the responses of each of the  
15 custodians were." Dkt. 161 (emphasis added). Notably, that Order came on the heels of this Court  
16 having warned Defendants were already at "risk [of] being held in contempt" due to their repeated  
17 and prejudicial disregard for Court orders on discovery. Dkt. 143.

18 On May 30, 2025, counsel for Plaintiffs and Defendants met and conferred telephonically  
19 regarding discovery, and specifically discussed the issue of communications outside of government  
20 email and OneDrive. On Monday, June 2, Plaintiffs' counsel emailed Defendants to memorialize the  
21 May 30 discussion. In that email, Plaintiffs specifically inquired about the forthcoming "submission  
22 of Defendants' declaration pursuant to the Court's order (Dkt. 161)." *See* Declaration of Emilou  
23 MacLean, Exh. 1.

24 In direct violation of the Court's Order, and notwithstanding Plaintiffs' follow-up efforts,  
25 Defendants did not file the required declaration by June 3 and still have not filed it. Dkt. 161. In  
26 response to Plaintiffs' inquiries this morning, counsel for Defendants stated over the phone that this  
27 failure was "inadvertent," and that Defendants would "try" to submit the required declaration today.  
28 MacLean Decl. ¶ 5; Exh. 1. Having somehow missed the Court's Order requiring the filing of a

1 declaration, it is thus unclear—and highly doubtful—whether Defendants “immediately [*i.e.*, on  
 2 May 30] ask[ed]” all of 20 custodians about their communications, as also ordered by the Court, or  
 3 whether Defendants did not even begin that process until today—a delay that risks further loss of  
 4 relevant communications to auto-delete features and memory lapses. *See, e.g., In re Google Play*  
 5 *Store Antitrust Litig*, 664 F. Supp. 3d 981, 982–83 (N.D. Cal. 2023) (sanctioning defendant who was  
 6 “no stranger[] to document production and discovery obligations” due to frequent involvement in  
 7 litigation for failure to preserve after plaintiff identified “curious lack of [instant] messages in [the]  
 8 document productions”); *RG Abrams Ins. v. Law Offices of C.R. Abrams*, 342 F.R.D. 461, 505–06  
 9 (C.D. Cal. 2022) (imposing sanctions for failing to preserve and produce text messages in response  
 10 to discovery requests).

11 Defendants’ pattern of discovery misconduct is egregious and prejudicial, particularly in light  
 12 of the accelerated case schedule made necessary by Defendants’ success in staying this Court’s  
 13 March 31 postponement order. Basic confirmation of how documents were collected from  
 14 custodians is the first of many steps to obtain basic discovery that should already have been  
 15 produced. Each day that Defendants ignore the Court’s orders on each step of discovery compounds  
 16 the prejudice to Plaintiffs in a litigation proceeding on a compressed schedule. Defendants cannot be  
 17 allowed to delay each step of discovery in the hopes of never producing relevant documents. Fed. R.  
 18 Civ. P. 37(b)(2)(A) (authorizing sanctions “[i]f a party or a party’s officer, director, or managing  
 19 agent ... fails to obey an order to provide or permit discovery ... the court where the action is pending  
 20 may issue further just orders.”); *Wanderer v. Johnston*, 910 F.2d 652, 657 (9th Cir. 1990)  
 21 (explaining sanctions appropriate where a party is guilty of failing to produce documents or things as  
 22 ordered by the court).

23 Date: June 4, 2025

Respectfully submitted,

24 ACLU FOUNDATION  
 25 OF NORTHERN CALIFORNIA

26 /s/ Emilou MacLean

27 Emilou MacLean  
 28 Michelle (Minju) Y. Cho  
 Amanda Young

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION  
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean  
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